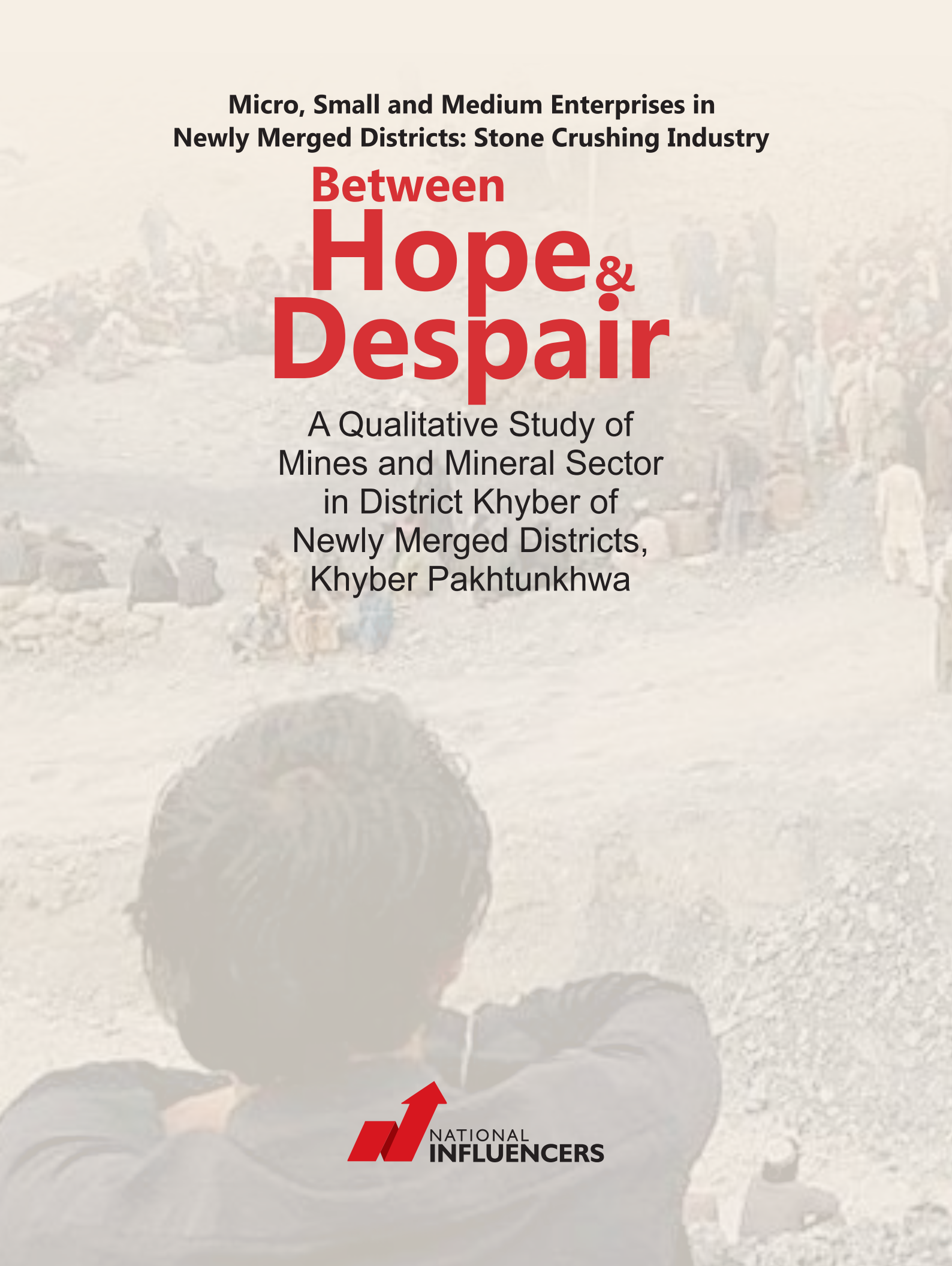
Micro, Small and Medium Enterprises in Newly Merged Districts: Stone Crushing Industry

Between Hope & Despair

A Qualitative Study of Mines and Mineral Sector in District Khyber of Newly Merged Districts, Khyber Pakhtunkhwa



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Micro, Small and Medium Enterprises in Newly Merged Districts:
Stone Crushing Industry Between Hope and Despair
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List of Acronyms

MSMEs	Micro, Small and Medium Enterprises
FATA	Federally Administered Tribal Region
NMDs	Newly Merged Districts
EU	European Union
GoP	Government of Pakistan
DC	Deputy Commissioner
SOP	Standard Operating Procedure
IT	Information Technology
JV	Joint Venture
FIR	First Investigation Report
FCR	Fata Crime Regulations
GNI	Gross national income
FDA	FATA Development Authority
PEPA	Pakistan Environment Protection
NOC	No Objection Certificate
EPT	Environment Protection Tribunal
KP	Khyber Pakhtunkhwa
DRC	Dispute Resolution Council
PA	Political Agent

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Foreword

Pakistan has been the target of various intensities of war and terrorism since the events of 9/11. Khyber Pakhtunkhwa and its Newly Merged Districts (NMDs) have been most adversely affected where the economic system and social fabric is irreversibly damaged. In 2018, the NMDs were merged with Khyber Pakhtunkhwa in an attempt to address this damage and bring the area at par with the rest of country. However, it has resulted in a variety of unforeseen consequences. This study was envisioned and undertaken after observing the refusal of local business community to accept the regulatory mechanism stipulated by the constitution of Pakistan. An extensive fieldwork with crush plant owner and staff and mine owners was undertaken to provide insights and suggestions for improving the situation. The results of the study are based on limited data collected from one important sector and are in no away a single or decisive view of the happening in NMDs. Yet, they provide a scientific understanding of the fragment of reality and give voice to the individuals who have been exposed to highly adverse conditions for decades. It is hoped that this study will initiate a series of efforts to understand, document and deliberate upon the regulations governing business environment in NMDs. It is hoped that the government along with policy makers, bureaucracy as well as international donor and human rights institutions will encourage scientifically valid and knowledge-based intervention in the region for its improvement.

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Executive Summary

Micro Small and medium enterprises have a crucial role in promoting inclusive development. They are the primary vehicle for job creation around the world and the engine of innovation and growth. Yet they are highly sensitive to the regulatory framework. The current study explores the influence of constitution of Pakistan on Crush plants and mining operations in Newly Merged District (NMD) Khyber of Khyber Pakhtunkhwa province in Pakistan. The region, along with six other districts, have been regulated under British Era Frontiers Crime Regulation (FCR) since 1901. The region was merged with the province of Khyber Pakhtunkhwa in 2018 with the hope that constitution of Pakistan would initiate an era of prosperity in the region and bring it at par with the rest of country. Nevertheless, the effects on the local business community, especially crush plants and mine owners were less than desirable for the stakeholders. This study endeavors to scientifically understand the situation by undertaking a qualitative study of various stakeholders from business and social sectors as well as the opinion of the most relevant government departments.

Open ended interviews were conducted from a total of 50 individuals including local businessmen, workers, owners, and political representatives. The representatives of the three most relevant departments i.e., mines and mineral department, industries department and environmental protection agency were also included. A thematic analysis of the collected data was undertaken where emergent themes allowed visibility to the views of the participants.

The findings show that the stakeholders are not satisfied with the new regulatory laws governing their businesses and their abrupt implementation mechanism. They consider the pre-merger time as the time of liberty and freedom with a single point of contact for regulating their businesses and nearly no intervention. The post-merger scenario is considered a nightmare for crush plants and mining industry as they were all declared illegal overnight and asked to go through a tedious registration process. They also complained about excessive taxation in the name of royalty, excise duty and other payments to local government institutions despite being allowed to operate tax free for the first 5 years. More than half of the crush plants and mining operations have been closed after being declared illegal due to a variety of reasons. Local inhabitants have become jobless and are unable to find a source of livelihood. This may lead them to criminal or terrorist activities for survival. The owners perceived government officials as corrupt and in search of underhand payments. They were also not happy with the new court-based conflict resolution mechanism, which was more time-consuming and expensive. They also complained that court decisions are not enforced due to lack of writ of the government and require extensive documentation which they cannot fulfill.

The government officials viewed the situation from their perspective and considered the right implementation of laws to govern the businesses. For them, it was more about performing their duty and collecting revenue to get high performance ratings and possible promotions. They did agree that their registration process is very time consuming, and they lack resources to do things

on time. They also realized that closure of crush plants and mines can lead to unemployment and subsequent issues. Yet, they considered their role as instrumental in regulating business as per government's will.

The study suggests undertaking policy reform as well as initiating programs to enhance awareness and conducting training programs to facilitate the local business owners. Strict and transparent laws must be implemented through policies to check corruption and the stifling role of government officials. A gradual implementation mechanism should be envisaged and shared with all stakeholders and one window operation should be created for approvals, licenses, and taxation etc. The government must ensure delivery of visible and reasonable benefits of the new laws. It should be followed by raising awareness about the advantages of registration among businesses and how formal sector can lead to high growth.

The recommendations to policy makers and government institutions endeavor to bring to fore the "muted voices" of the business community of the District Khyber. Changes in laws, regulations and implementation mechanisms have been suggested. The results are also disseminated through discussion session and social media among all segments of society to create awareness regarding the issue.

CHAPTER-1

INTRODUCTION, GOALS & METHODOLOGY

1.1. Introduction

Sustainable and inclusive economic development is a highly pursued aim of nations. Supporting micro, small and medium enterprises (MSMEs) through policy level interventions represents an important step to this end. MSMEs channel the entrepreneurial potential of individuals and are a seedbed of innovation and job generation. In the European Union (EU) MSMEs generate 99% economic activity and 66% jobs (Gama and Geraldes, 2012). In South Asia, they have been central to employment generation, enhanced productivity, entrepreneurship capital development and overall economic growth in the last decade (Mendez and Houghton, 2020). Moreover, they are considered a solution to poverty in destitute contexts.

Despite their importance, in middle and higher income countries alike, MSMEs have suffered (Boadi and Mertens, 2018) due to various reasons. Asia Small and Medium-Sized Enterprise Monitor (2020) considers the lack of contextually relevant laws and proper governance mechanisms as structural issue that hinders the growth of MSMEs. Thus, it leads to a significant lag in ease of doing business index. During 2020, MSMEs around the world have suffered the most due to their fragile nature and overall negative economic growth caused by the Covid-19 pandemic. Thus, it is most important to focus on research driven policy framework with a special focus on provision of contextually relevant law and governance mechanism to propel the growth of MSMEs.

The definition of MSMEs has been evolving and varied throughout the world. The most widely used measure is related to the number of individuals working in an organization. However, many nations also add monetary dimensions such as assets, turnover or capital investment as a condition. Most commonly in micro enterprises, the number of employees is less than 10 while small business has between 10 and 49 employees with medium sized businesses going up to 249 (Jassim and Khawar, 2018).

Empirical evidence in favor of MSMEs, especially in the developing and underdeveloped world, cannot be ignored (Shankar, 2016). In middle and high income countries, SMEs have been the engine of innovation that revitalizes economies by saving precious resources and taking it to the next level of efficiency (Shigehiro, 2012; Yoshino and Taghizadeh-Hesary, 2016). In the lower income countries, micro enterprises have enabled a significant number of individuals and families to earn their livelihoods and come out of abject poverty. International institutions like United Nations, World bank and Asian development Bank have spearheaded the argument for MSMEs (Setboonsarng and Parpiev,2008). Contributions of MSMEs are highly context and environment dependent.

1.2. Context of the Study

According to World Bank's GNI based classification of economies Pakistan (GNI $1530) is a lower middle income country that is faced with the challenges of providing basic necessities of life to its citizens along with tackling corruption and improving governance for graduating to higher income level (Ayyagari et al., 2016). The level of development shows that it should prioritize poverty alleviation through promotion of MSMEs before focusing on growth orientated Gazelles. The entrepreneurial framework conditions in Pakistan have depreciated in the past seven years. Although Pakistan's ranking has moved 28 places higher to 108th position in ease of doing business index (Autio, Fua and Levie, 2019), the data only covers Lahore and Karachi. Moreover, a detailed analysis shows a depreciation of 7 places in financing MSMEs and protecting minority investors (2 places). Thus, new businesses have seen negative growth. Pakistan still rates very low on the issues of taxation and registration of property which are impaired by high corruption. This ultimately compels MSMEs to avoid the regulatory framework and operate informally.

The Newly Merged districts (NMD) of Khyber Pakhtunkhwa (erstwhile FATA) is an underdeveloped and unprivileged region bordering with Afghanistan and is home to a population of an estimated 4.8 million people. This region has been a war zone during the past decades due to the constant foreign invasions in Afghanistan. In fact, it has been in the eye of the storm since 19th century as it acted as buffer between British India and the USSR. After 9/11, several military operations have taken place in the area to eliminate militants displacing millions of tribal inhabitants. The citizens of the region have been living in extremely marginalized conditions lacking basic facilities such as education, health, employment and infrastructure. The inhabitants lack economic opportunities and have limited roles leading to an increased rate of crimes and militant recruitment.

On 31 May 2018, with the application of 25th Amendment, the Government of Pakistan (GoP) changed the special status of Federally administered Tribal Areas (FATA) which

was governed through the British era Frontier Crimes Regulation (FCR) and merged them in Khyber Pakhtunkhwa province. This effectively brought FATA, now called the seven Newly Merged Districts (NMDs), under the constitution of Pakistan. However, the NMDs effectively remain frozen in time and are left behind in every respect. NMDs acted as a battleground for various militant factions as well as organized armies in the past two decades. Centuries old tribal leadership systems were uprooted by insurgent forces in the last 15 years. Thus, they are only part of Khyber Pakhtunkhwa in theory while in practice they are still in a transition stage.

An enormous effort is required to bring the seven districts at par with the rest of the country. Pakistani government with the help of international community and developmental organizations have been striving hard to accelerate socio-economic growth in the NMDs. Employment generation is considered as the core issue and the top priority of the Khyber Pakhtunkhwa Government.

Mines and mining industry is the dominant industrial sector of NMDs. Traditionally mines were owned by tribes, and they have invested collectively in developing them. The sector provides direct and indirect employment to ~~hundreds of~~ thousands of people as it feeds various products to the booming construction sector in Pakistan. In the past two decades, the destruction of electricity supply systems and stringent security checks by military and paramilitary forces of Pakistan has brought the industry to a halt.

After improved law and order conditions, in the last two years, the people of NMDs have endeavored for restoration of their stone crushing plants in District Khyber. However, they were faced with the new reality as under the newly implemented constitution of Pakistan, various departments (now operating in NMDs) required lengthy procedures. They includes licensing and leasing agreements and security and environmental approvals and clearances among others. Moreover, under the constitutional law the mines cannot be owned by tribes and are now considered the property of the government of Pakistan. This has created resentment among a vast population of district Khyber as they perceive it a forced confiscation of their lawful right. They have also resorted to strikes and closures and have filed a writ petition in the high court for resolution of the issue. However, handling this complex situation requires an in-depth understanding of the incongruencies of the constitutional law, the implementation of policies with the premerger traditional tribal system governing the crush plants, mines and mineral industry in District Khyber.

1.3. Aim of the Project

This project seeks to scientifically understand the viewpoint of the various stakeholders including entrepreneurs, workers, owners, and general population as well as officials of government departments and elected representatives before making recommendations on resolution of the issue.

On the basis of scientific findings that take the view of all stakeholders, this project will make policy recommendations to enhance the role of formal law vis-à-vis ease of doing business. This will not only provide a clear view of all stakeholders about what is possible but also create awareness among policy makers and government officials to take solid measures towards enhancing entrepreneurial developmental and job opportunities in the traditionally strong sectors of NMDs.

1.4. Ultimate goal and Output-outcome frame

Practical steps are taken regarding policies and their implementation that improve the business environment on the parameters set by ease of doing business.

Stone crushing plants in District Khyber willingly operate within the ambit of formal law and provide business and employment opportunities to all and sundry.

S.No	Outputs	Outcomes
1	Qualitative research study conducted to understand issues faced by stone crushing plants. by conducting interviews with plant owners/managers (20), relevant government departments (at least 5), business, associations (2), political representatives at least 5), Khyber District of Khyber Pakhtunkhwa operating Under the new constitution of Pakistan	Policy recommendations in at least three major areas related to ease of doing business agreed/vetted by stakeholders to facilitate MSME in NMDs of Khyber Pakhtunkhwa, Pakistan.
2	Qualitative research study conducted to understand the influence of newly implemented constitutional law of Pakistan in NMDs in terms *of* its facilitating or hindering business environment District Khyber by interviewing at least 50 stakeholders.	Report disseminated to relevant authorities, affected parties, and print. Facebook page estimated MHO reach, Twitter at least 200 engagements by 150 people and the National Influencers' website. 2000 downloads in the capital city Peshawar, District Khyber, and other districts of Khyber Pakhtunkhwa
3	Advocacy sessions (at least 4) conducted to inform and sensitize 80 most relevant stakeholders and public through print, electronic and social media to facilitate practical steps.	Stakeholders and the public are sensitized regarding facilitation of MSMEs in NMDs. A total of 80 stakeholders attend advocacy sessions
4	Research report will he published in 1000 numbers and launched in Peshawar Press Club.	1,000 students, journalists, lawyers, lawmakers, and academicians will read the report and be educated about the Issues facing by the stone crushing plants owners under the implementation of constitutional law.

1.5. Research Methodology

This study employed qualitative research. In essence it is a flexible research strategy to conduct naturalistic inquiry where the questions are broad, open ended and more

general in nature I (Ritchie *et al.*, 2003). Primary data from stakeholders and government officials was collected through open-ended interviews. Face to face interviews, in Pashto (native language) were conducted with approach participants in their business settings/offices or other natural settings such as homes. Audio and video recording were made, and the voice files were translated and transcribed in English. After transcription, data analysis procedures were applied for identification and generation of themes. The following diagram shows a summary of methodological process employed to generate the findings of the study.

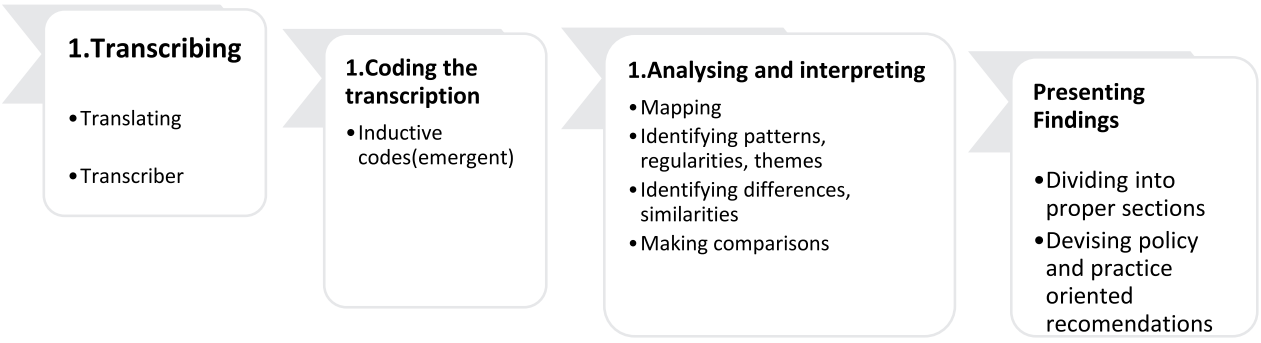

Figure 1.1- Transcription, coding, analysis, and presentation of findings

1.6. Purposive sampling

Stakeholders were identified and open interviews were conducted over the span of 45 days by visiting them. They were identified through purposive sampling and most relevant respondents with deeper insights were approached. It also allowed for reasonable flexibility in accommodating the emergent themes and focusing on respondents with higher relevance. Furthermore, snowball sampling was also used to get recommendations and create trust for giving unbiased opinions. Local networks and friends were approached to visit and recommend their acquaintances so that they could express their views freely. The following table shows the summary of stakeholders and government employees interviewed.

S	Stakeholder group	Number
1	Tribal Elders	6
2	Political representatives	14
3	Owners/staff members	20
4	Government Officials	3
5	Business Union representative	7
	Total	50

Table 1.1: Details of Sample

The next chapter exbibits the findings of this study before making policy recommend-dations and providing future research directions.

CHAPTER-2

FINDINGS OF THE STUDY

2.1. Introduction

This chapter exhibits the findings of the study that were obtained after carrying out thematic analysis of the open-ended interview conducted with various stakeholders and government officials. The findings are divided into two major parts. The first presents the findings from interviews of crush plants and mine owners in District Khyber. The detailed narrative of crush plants told by the stakeholder provides a comparison between premerger and post-merger era and the current situation along with a way forward. The second part exhibits the findings from the interviews conducted with government officials of three concerned departments. It provides an elaborate view of the process and effects of on-ground implementation of the relevant laws. This part also includes the perspective of representative of mines association regarding the official narrative. It must be noted that most of the crush plant owners are involved in mining to various degrees. They might jointly or individually own leases or have informal arrangements with local landowners to excavate stone for raw material. Although they have separate associations i.e., mines and mineral association and crush plant association, majority of the individuals have membership of both organizations. The reason for keeping a dual identity is because they are regulated by different departments. Crush plants are regulated by the Industries Department of Khyber Pakhtunkhwa and Environmental Protection Agency of Khyber Pakhtunkhwa. The mines and mineral industry are primarily concerned with obtaining lease agreements and keeping the Mines and Minerals Department of Khyber Pakhtunkhwa satisfied.

2.2. The Stakeholders' Perspective: Views of Crush Plant and Mine Owners

The first part of the findings portrays the detailed perspective of crush plants and mine owners from District Khyber. This section introduces the crush plants and mines and mineral industry in District Khyber. Further it is divided into three sub-parts where the first refers to the state of crush plants in the premerger era while the second exhibits the views of stakeholders regarding the effects of merger. The third section explains the current state of crush plants in the post-merger scenario and suggestions for way forward.

2.2.1. Introduction to Crush plants and Mines Industry in District Khyber

The findings show a vivid awareness of the history, presence and evolution of mines and mineral industry among the stakeholders. They elaborated that crush plants were established in District Khyber in 1992 through private investments and without any facilitation from the government. The first site for crush plants was the mountains of Besai where around 150 units were working at its peak. The main reason was that high

quality raw material was readily available there in abundance. Today several locations have crush plants which predominantly occupy areas in vicinity of mines.

"Jamrud, Sor Kamar, Takhta Beig, Bakar Abad, Shah Kas and Besai has all the raw material mines and from there the stone is transported to crush plants in areas such as Tehkta Beig. "

The outputs of crush plants include various construction material such as (a) stone aggregates of various sizes, (b) material for concrete blocks, (c) asphalt mix for road surfacing and (d) rock-sand. The products extracted from raw material sourced from District Khyber is of higher quality than its competitors. It absorbs the least amount of water, and its concrete mix is almost unbreakable.

Besai was closed due to post 9/11 terrorism while various mineral rich areas like *Terah* and *Rajjgal* remained unexplored due to presence of terrorist and military operations. These areas were controlled by two local militant organizations including *Ammar-Bil-Maroof* and *Lashker-e-Islam* for fourteen years and no mining happened there. Now after their departure, some people are trying to explore the mines. The findings show that a period of 8 years was particularly severe on crush plant operations where the owners found themselves totally helpless.

> *The situation got worse in this place from 2008 to 2016. These 8 years, all the machines were closed and all work on these mountains was closed. The situation was not good due to Taliban at that time. So, at that time we thought what should we do?*

As mentioned earlier, the crush plant represents a significant amount of private investment by local people and has acted as a primary job avenue. A small size crush plant requires an investment of Rs. 30 million while medium sized plants in District Khyber may go up to Rs. 80 million. A crush plant consists of a stone crushing and sorting machine as well as dumper trucks and excavators.

> *Each crush plant exceeds thirty million rupees in worth and total investment is easily worth above billion.*

The 40 crush plants in *Takhta Beig* employ 35-40 workers at average while around 500 dumper trucks and 50 excavators operate which employ skilled drivers. In total, the crush plants in District Khyber generate direct and indirect employment opportunities for at least 10,000 individuals.

Considering the lower-than-average literacy rate in District Khyber (as compared to rest of Pakistan), it is a crucial livelihood opportunity available to local population. In fact, the absence of these crush plants might have forced the local population to migrate to other parts of the country (just like many places in NMDS) during the height of terrorism.

2.2.2. Pre-Merger Period: The Golden Era for Crush Plants

The crush plant owners and local stakeholders were equivocal in declaring that the pre-merger period was a golden era for crushing industry primarily due to nonintervention of government.

> *Before Merger operations were smooth and there was no intervention from government as there was only Political Agent and DC [Deputy Commissioner] and governmental department were absent.*

Along with freedom of doing work and least intervention, the findings show the absolute power of Political Agent, dependence on informal institutions for conflict resolution and major presence of locals in the Frontier Corps (the pre-merger police for NMDs) were the main reasons for smooth running of crush plants.

Firstly, a single individual commanding absolute power over the affairs of the area effectively acted as a single window operation. All the stakeholders from industry and local community were very comfortable with this arrangement as it was consistent with their ancient cultural norms.

> *The Political Agent was like a king and had all the powers and that system worked well here.*

Secondary, they resolved their conflicts through millennia old culturally embedded informal institutions of the "*Jirga"* which was run by a jury of tribal elders and most distinctively delivered swift justice. The findings show that local stakeholders and plant owners accepted this arrangement even with some discrepancies.

> *Conflict resolution through jirga used to be a much better system. There might be some discrepancies, but swift justice would be delivered, nevertheless.*
> *The Jirga was much better as the current court system is a waste of money and time.*

Thirdly, the presence of local inhabitants in Frontier Crops ensured that they realized the importance of employment opportunities offered by these crush plants. The crush plants willingly paid a small royalty fee to the local administration. So, they never bothered them in any matter.

> *They knew about our job and realized that a lot of peoples' livelihood depends on this, and they have never demanded any bribes.*
> *There was only royalty pre-merger to be paid and local forces were deployed in our area who hailed from our own tribes and they knew us.*

The three elements found in pre-merge arrangement; governing institutions having higher affinity to the local culture, conflict resolution through Jirga and the presence of local inhabitants as formal police force resulted in high growth and prosperity for crush plants as well as steel industry.

> *We used to send steel to other areas but now we must bring it from Lahore and Nowshera.*

They clearly show their dislike for the merger.

> *So, people including myself are of the opinion that we have gained nothing from merger. People are now afraid, and it has even deteriorated all other industries like out of 25 steel mills only 3 or 4 remain operational.*

It can be concluded that although pre-merger, the electricity outage created problems for crush plants, they were operating in a much conducive and growth oriented regulatory environment. It featured affinity with local culture, sensitization of policing force to their critical role and reliance on informal conflict resolution mechanism. Crush plants along with other industries prospered in that era and provided employment to thousands of local inhabitants.

2.2.3. Effects of Merger on Crush plants: The ills of Increasing Regulatory Footprint

On 27th May 2018, the Provincial Assembly of Khyber Pakhtunkhwa voted overwhelmingly to approve the 25th constitutional amendment (passed by the National Assembly of Pakistan 3 days earlier) to merge Federally Administered Areas (FATA) with Khyber Pakhtunkhwa. It was an abrupt event that embodied a watershed moment towards long-held hope but also gave rise to doubts. Several minority voices in the national and provincial assembly also questioned the approval without proper debate. However, the primary reason for suspicion was that the amendment took little account of the years long discussion and meetings with the various stakeholders of NMDs and it didn't address the incremental implementation mechanism.

The merger was passed on 27th May 2018, but its implementation happened without any proper schedule or planning. The event was labeled as freedom from FCR and the beginning of new era of freedom, prosperity, and socio-economic growth. The findings show that the merger had very few positives and created unforeseen problems and bottlenecks for the mines and mineral industry in general and Crush plants in specific.

Benefits of Merger

The stakeholders agreed that the merger resulted in a continuous supply of electricity which is a major step towards sustaining the crush plants. They also addressed the reservations in mines and minerals act which originally allowed equal leasing rights to all citizens of Pakistan and did not give any preferential treatment to the local inhabitants. The act was amended to accept the first right of lease to be given to a person or company hailing from District Khyber. In the absence of the locally interested party, an outsider might be considered.

> *The mineral act was passed in provincial assembly, and it was made a law that local people will be given preference in lease agreement and if no local is interested then someone from outside can come to do it…. People are somewhat satisfied with the law…*

This has now addressed the major fear of people that the government is supporting outsiders to take over our previous resources. However, the amendment does not stipulate any time restriction for local people or the company to start mining after getting the lease and resolving all conflicts. This has effectively led to the unending spiral of tribal dispute over mines that effectively rendered them abandoned. Thus, tribal feuds and rivalries are to be blamed for inoperative mines and subsequent lack of supply to crush plants.

> *But bad luck was, that whenever some mineral got discovered, government put lease on it, due to which the locals believed that it is some kind of treasure and started raising objections and filing cases…. Thus, the government should make them complete this process in 3 months before expiry of lease and be given to next person in line.*

General adverse conditions affecting mines and mineral industry.

The analysis shows that the stakeholders benefiting from crush plants face numerous problems in sustaining pre-merger operations and see no growth opportunity. They also pointed to several general as well as specific underlying reasons that have resulted in shutting down of crush plan operations. In a general sense, the increased inflation coupled with the excessive cost of living has not only led to surge in prices of inputs but to decreased demand.

> *Yes, electricity bill, now if we pay the Rs. 15.5 lac bill to the government then how will we feed our children, inflation is increasing, country is becoming bankrupt, and we have no real leaders. Everyone is struggling for themself… government should work for the people, society, and nation for their success.*

In the midst of this inflationary pressure, the post-merger changes have multiplied the troubles of crush plants. The government provided no help, and the business community was left on their own to adjust to the sudden implementation of new laws and unexpected emergence of regulatory institutions. They have never seen any facilitative role of the government.

> *Since merger we are in a "grey zone" (neither here nor there) and thus everyone is free to implement their rules upon us.*
> *The government has never facilitated us in any way despite applications.*

Role of Departments

The role of government has been seen as interventionist. They complained that

government officials have issued a lease agreement for mines which are owned and developed by tribes for decades. While officials also issue orders without understanding the context.

> *[There is]so much intervention from every government official. Mines for raw material belong to different tribes but leases are given by the government.*
> *Commissioner Peshawar came to Khyber agency on a personal visit and saw dust rising from crush plants and ordered their closure on the pretext of pollution.*

Irrational Taxes

The primary issue of taking taxes and royalties has rendered the crush plants unfeasible. The presence of government departments and their footprint is seen through the increasing of taxes.

> *Post merger all the departments including environment and mining got their operation here and they have taxed these activities.*

Even the Tehsil Municipal Administration, which is primarily concerned with regulating the marketplace and traffic police also tried to levy some sort of tax or fine on the trucks belonging to crush plants.

> *It includes mineral tax; TMA tax and they [crush plant owners] have protested… as government has committed 5-year tax breaks.*
> *Now even traffic police levy fines when something is spilled on the road.*

Complex Lease requirements and erratic application of environmental laws

The government is keen on proper regulation of mines and transparent issuance of leases. Mining without a lease is not allowed anymore and the mines department, along with the police, stops any "illegal" mining operations. However, the government is unable to protect the lease holder and thus unable to enforce its jurisdiction.

> *If we don't take the lease, then the government stops us [but they] cannot give protection to people who have been given leases as local people stop the miners and claim that mines are their ownership…, so we are in a quandary.*

Another issue related to the lease is fulfillment of documentation. The crush plant owner was exposed to this requirement for the first time which is very time consuming. This barrier has hindered many running businesses and they still do not know the solution.

> *Lease has so many documentation requirements and we are businessmen. We will either go around in the offices and get stuck in documentation or do business. This affects our business immensely.*

The stakeholders highly criticized the role of the environment department. They first

objected to implementation of specific environmental law which was enacted in 2020 while the crush plants were established in 1992.

> *The current environmental act stipulating… conditions have been enacted in 2020 and we established this industry in 1992. In fact, the first act was made in 1996.*

The key issue raised by environment department was regarding dust production from the crush plants which was injurious for around 50 houses and a nearby mosque.

> *The environmental department has a problem with dust especially when there is a storm and thus, they asked DC to seal us. They have problems with 40-50 houses who are now residing here, but they were not here several years ago.*

However, it was later revealed that these houses belong to the labor force working in the crush plants and they have never lodged a complaint against them. In fact, they have constructed these houses nearby so that they can save time and money spent on commuting. If crush plants are relocated, then they will try to get residence in a nearby area.

> *They came here and made houses as they are working in crush plants, and they cannot afford to travel every day. If you relocate these crush plants, the houses will come after them.*

Nevertheless, the government has resolved to shift the *Takhta Beig* crush plants to an alternate area. The proposed site is not only under conflict (and the case is in court) but also further away from the main road and will result in higher transportation costs. Thus, it is not feasible in any way.

> *The government wants to shift it to Jabba .... with no population, but [it is] under conflict and under hearing in court… and more than 10 Km away…. so, people are weary.*

Shut down of crush plants

Not every crush plant could operate when government departments created multiple hurdles during unconducive economic conditions. The stakeholders reported closure of many crush plants.

> *There were more than 50 crush plants in Takhta Beig and now only 21 are operating due to government taxation even after they have committed that NMDSs will not be taxed for 5 years post-merger.*

Conflict Resolution

Conflicts resolution is a crucial part of any society but for the business community speedy justice is a matter of survival. The premerger FATA resolved their disputes through the Jirga system- a traditional tribal institution. Jirga system delivered speedy

justice by applying age-old customs and had its strengths and weaknesses. For instance, it is dominated by male elders and excludes marginalized groups (such as women), its record is not properly documented and thus has a potential for abuse of power. Given the uncertain conditions in District Khyber, it should be the highest priority of government to focus on creating awareness about the new system of law and workings of courts and introduce as a better alternative to courts. However, instead of becoming an attractive feature of new law, it has become the most contentious issue due to several reasons including lengthy time-consuming process, lack of land record, non-affordability and inability to resolve business dispute and enforce them.

Lack of land record and Documentation

In the tribal culture of District Khyber, the land records were never documented, and tribes and subtribes knew about landholding. Tribal elders, who functioned as arbitrators and decision makers in jirga in case of a dispute, were considered as the authentic sources of land records. Moreover, The Jirga system was based on verbal discussions and decisions with no paperwork. On the contrary, the modern judicial systems require significant documentation. The literacy rate of District Khyber is lower than the national average and the local inhabitants find the current system cumbersome and puzzling.

> *Then there is a big problem when there is any dispute on any land so the court doesn't understand our terms because they want records and history of that land but we don't have anything like it here so we cannot tell whose land it is and who is right here and take 5 years just to give them four conclusions.*

There is no record with them because we have all the record and court doesn't have that's why people are facing difficulties because if you don't have full information how you will give them justice it is like wall can't be built without base.

Time-consuming process failed to resolve business disputes

The Jirga system used to deliver speedy justice, but the current judicial system is found to follow a lengthy process. The lack of documentation also hinders the judicial system and disputes take a long time to resolve. Inability to resolve disputes that have led to closure of crush plants can lead to unemployment of labor and permanent dissolution of these businesses.

> *Now there is a court case and it's a long process. People here have no awareness regarding the use of law and court. So, it will take months and months now and labor will be unemployed.*
>
> *The new court system has no solution for our business conflicts, and we just get dates after dates.*

Affordability issues

The lengthy justice process and expenditure on hiring a lawyer and doing documentation has all made the new system unaffordable for the common person.

> *When we register FIR and go to court the judge doesn't understand our statement and the people of the local area are poor and cannot afford a lawyer's fee. We are facing difficulties. In the end where will go we don't know what to do.*

Pervasive perception of corruption

Findings show that the behavior of bureaucracy is not only irrational but unsympathetic towards the crush plants and mines and mineral industry in the area. However, according to the stakeholders, this irrationality is not random and is just a blind implementation of law.

> *Pakistani governmental bureaucracy has a predatory attitude, and they want to find excuses to ask for bribes.*

Corruption is the crosscutting theme which was presented by the stakeholders as an underlying reason for the haphazard implementation of government regulation.

> *They have set their eyes on getting something from us…. Pressure for corrupt money has rendered industry unfeasible.*

The environment department creates issues related to air pollution by applying regulation and creating excuses to mint money.

> *"Corruption is a huge issue as they find a pity issue like creating pollution and ask for bribe or otherwise the plant will be closed."*

The traffic police and Tehsil Municipal Administration exploit a specific weakness of crush industry where they must continuously transport their produce to achieve economies of scale and be profitable.

> *Our work requires 24-hour transport, but we have only 8 hours [at night] and we are idle for 16 hours and thus make grounds for demanding underhand money.*

The mines and minerals department has not organized a complete procedure for implementing the lease agreement and they have no coordination with the local administration to provide protection against the local tribes who claim the ownership of mines. Nevertheless, they have a vested interest in making lease agreements.

> *The reason is that getting a lease is very hard and the mineral department…wants a huge amount of bribe.*

In summary the stakeholders opined that the barriers created by merger of District

Khyber is rooted in the absurd and random implementation of government regulations. The cost of production has increased due to the introduction of various taxes. However, the underlying reason behind creating barriers for crush plants and mines and mineral industry is to mint corrupt money. This has rendered most of the industry unfeasible and more than 50% of the crush plant have shut down. This situation has deep implications for the immediate industry and employment as well as trust in government institutions.

2.2.4. Post-Merger Scenario and Way Forward

The post-merger events conditions have led to closure of significant number of crush plants and mining operations.

Effects on Workers

The condition of workers after shutting down of crush plants is a matter of concern. Most of the labor force is working on a daily wage basis and are barely able to make the two ends meet. However, they are unable to get the basis daily food if the crush plants shut down. The effects are not limited to the labor working in the crush plants but also in the related sectors such as dumper repair mechanics.

> *When they shut down, most of the workers on daily wage became unemployed and they try to find something, but it is very hard on this hand to mouth individuals. Even mechanics lose their jobs when this business closes.*

The unskilled labor must look for another daily wage job to survive so they may go to other areas of the Khyber Pakhtunkhwa that have crush plants and mining operations or try to find some other work. However, in general conditions of economic downturn, finding another job is a rare event. Consequently, the labor force may turn to illegal means of earning money that can, in some cases, turn into violent and extremist activities.

> *Our people, if they are jobless, will start robbery and any crimes even now the government doesn't know how to work. We want the government to fulfill promises because it's very hard for us.*

Mistrust Issues

Given the state of the general business community and mines and mineral sector, it is clear that the trust in the government has largely eroded. This is an alarming situation and can have catastrophic effects as the tribal society may totally reject the formal institutional framework.

Yes, from these things we are very tired, and we hate this kind of thing, but we cannot do anything about it and this government cannot keep that fair bond with us because they don't know our problems. So, then these crush plants were built here and now they are closed.
Present leaders are nothing, they are behaving like kids. They talk like kids, there is no one who talk or work for our future.

Expectations from merger and Perception about merger Post hoc

The inhabitants of NMDs including District Khyber had high hopes from the merger event as they were promised security, extraordinary developmental funds and an accelerated program to help them come at par with the rest of Pakistan. However, the lack of progress in implementing the reforms has been frustrating. The extension of the courts and other departments have not been complemented by establishment of significantly new development projects, provision of basic services, and substantial rehabilitation of infrastructure damaged by conflict.

District Khyber has been at the forefront of war against terrorism and peace and stability was promised through merger. However, the government has failed to bring a complete end to violence and militancy in the area and a few pockets of District Khyber still experience terrorist attacks and clashes between security forces and militants.

A merger was perceived by a significant number of people as useful and an advance. They thought that they would get rid of the old FCR based system where power is vested in the Political Agent and the Malik takes all the benefits. People hoped for prosperity and a rights-based system where they would be taken care of.
Merger was expected to give boast to this terror effected area but unfortunately it has backfired and at least reduced employment by 50%. So, it is pathetic that if they cannot give us more employment, they should not at least take way the current from us.

Demands of Crush plants

The Crush Plants owners demanded that their grievances should be addressed by recognizing them as an important economic sector of the area. They are unequivocal in their demand for declaring the crush plants site such as *Takhta Beig* as an industrial zone, but the government is not listening.

Our voice should be carried to the government. Our demand is to give us the status of industrial zone.

Solutions to Merger Ill effects

Most interviewees opined that the government must take steps towards resolving the problems of the ill planned merger of District Khyber. Some of them suggested that the

old FCR system should be implemented after being reformed with the consultation of local representatives.

> *The solution now is to keep the merger but implement amended FCR where the changes should be made according to our collective wishes.*
> *Improvement in FCR is a better path than this sudden merger.*

Others argue that the current reforms cannot be reversed so it is important to make necessary amendments in the implementation mechanism with the consultation of local representatives and tribal elders and then keep the promises. If the changes do not happen and the government didn't change its attitude, then jobless people may become anti-state. They argued that the government should not take away the current employment of people to avoid such a dire state of affairs.

> *They should implement the merger and its laws slowly and gradually. people will understand the court and its other system slowly.*
> *People here should be given priority over other areas and jobs should be created so they can rebuild their lives. But if you take away their current subsistence then they will surely turn to wrong things and may become terrorists and become anti-state. If they earn their livelihood, then they will never become anti-state.*

In sum, it can be stated that the crush plant and mine owners are completely dissatisfied with the current situation. They feel that they are fighting a lost battle which is going to conclude with the closure of their businesses. The next part elaborates the view of concerned government departments to contextualize the abovementioned views.

2.3. The Official Perspective: Views from Concerned Departments

The premerger FATA had a reasonable regulatory framework and relevant laws to govern the mines and crush plant sector. All the government organizations were present; however, they had a limited footprint with weak enforcement. In the post-merger era, all government departments were given complete powers to exercise their will and take recommended legal actions in case of non-compliance. For this study, it means that analysis of secondary data, documents and relevant laws could not explain the change in on ground situation and the actual unfolding of event must be collected from officials of concerned departments. For this study, three departments involved in regulation and licensing of mines and crush plants were interviewed. It included the Environment Protection Agency, the Industries Department and the Mines and Minerals Department. The findings of thematic analysis of open-ended interviews conducted with the official are elaborated below along with important quotations.

2.3.1. Terrorism, Mineral Reserves and Laws before Merger

The findings show that they agreed with the fact that NMDs are mineral rich, and District Khyber is specifically rich in various heavy metals, iron and coal.

> *We have heavy metal such as antimony, lead and abundant coal and also iron, which is currently being mined.*

The primary issue in non-exploration of minerals in District Khyber is due to its occurrence in the remote and border areas with Afghanistan. It requires considerable effort and government backing with sufficient funding and long-term planning. This will facilitate the technical teams and engineers to conduct a proper survey and isolate the precise location of different minerals.

> *They lie in a very difficult terrain…. mineral resources are located on the border areas like Terah and Ali masjid and Molagori etc.*
>
> *The technical team cannot go there because of law and order situation. So, we do not know where to mine for the minerals and no one is going to invest there.*

They also argued that terrorism is the primary deterrent behind the non-exploration of mineral resources of District Khyber. The border region with Afghanistan has been unstable since a long time, and it has a great bearing on mines and minerals.

> *The exploration has been largely curtailed due to lack of access of the experts like mining engineers and geologists to this area due to security issues and terrorism.*

Consequently, it deters any large companies with long term investment plans to invest in mining.

> *We need investors but we are unable to attract large companies.*

The findings show that government officials emphasized that in premerger times there was presence of laws regarding mining and crush plants, but they were not implemented properly. Legal requirements such as environmental approvals, getting licenses and payment of royalties and excise duty to mines and minerals department was a part of law pre-merger and was regulated by FATA Development Authority (FDA), but it was not enforced properly.

> *Previously the law was not implemented but now it is being forced…It creates issues.*
>
> *Before merger it was regulated under Pakistan Environment Protection Act (PEPA) 1997 and even then, they were illegal and had no document and it is the same case now.*

The change in regulatory framework and implementation mechanism due to merger had a significant impact on the crush plant and the allied mines industry.

2.3.2. Navigating the Maze of Regulatory framework to "become legal."

The findings show that the three most relevant departments that regulate mines and

mineral and crush plants have strict requirements. They follow a complex, time-consuming and slow process that is essential for everyone to be declared working legally and avoid notices, fines and subsequent closures. The mines and mineral and crush plant owners that are operating today (who have started pre-merger or post-merger) must complete all the requirements. They need to get approvals, licenses and satisfy continuous monitoring and inspection along with payment of various royalties and excise duties to avoid fines and closure.

The Environment and Industries department assesses air, noise, water, soil pollution and social impact of the crush plant. The basic requirement is that it should be located at least 300 meters away from the population. The industries department further certifies that there is no riverbed and road within 300 meters before issuing a license. The mines and minerals department is concerned with mining lease and they can issue a prospecting lease (for searching suitable deposit in an area) or mining lease (for excavating and obtaining the mineral). The locals of District Khyber who hold a piece of land are first offered the lease without any bidding process. If they are not interested, then anyone else can get the lease which is also subject to obtaining a No Objection Certificate (NOC) from the local landowner.

Process of Approval and licensing

1- The environmental Protection Agency issues "*three approvals are issued schedule 1-10 which describes the power and size of the crush plant" .... Upon payment of a prescribed fee renewal happens after every two years unless the location is changed.*

It takes up to six months in normal circumstances but is taking longer nowadays due to staff shortage and resource unavailability.

2- The Industries Department issues a license once they inspect the machine and are satisfied. This takes around 30 days but may take longer.

3- The Mines and Minerals Department has four wings to regulate mining. The Directorate branch issues the license after the Inspectorate branch inspects and gives a satisfactory report on checking all the documents issued in the previous two steps and after ensuring safety and other requirements. Thirdly, the Commissionerate branch continuously collects royalty and excise and finally the Monitoring unit pays regular visits to ensure proper operations and control any illegal mining.

The next *flow chart* shows the summary of process, costs and time consumed for getting a license for crush plant and/or leasing a mine and starting excavation.

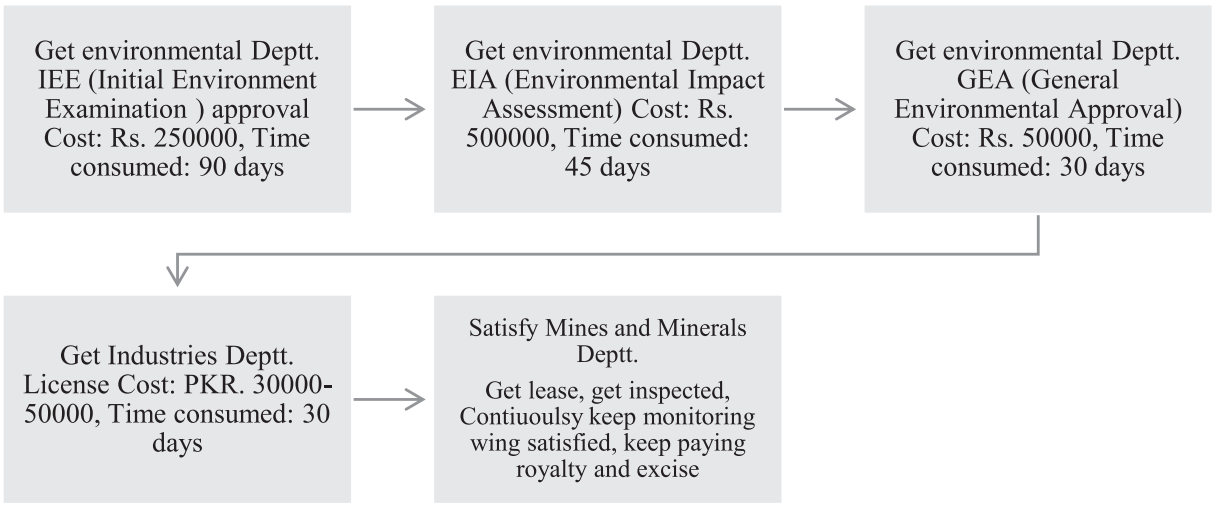
Get environmental Deptt. IEE (Initial Environment Examination) approval Cost: Rs. 250000, Time consumed: 90 days
Get environmental Deptt. EIA (Environmental Impact Assessment) Cost: Rs. 500000, Time consumed: 45 days
Get environmental Deptt. GEA (General Environmental Approval) Cost: Rs. 50000, Time consumed: 30 days
Get Industries Deptt. License Cost: PKR. 30000-50000, Time consumed: 30 days
Satisfy Mines and Minerals Deptt.
Get lease, get inspected, Contiuoulsy keep monitoring wing satisfied, keep paying royalty and excise

Figure 2.1. Formal procedure for mines and crush plants along with days and expenditure

The Government officials argued that they charge a very small fee in royalty.

> *Granite is sold from Rs.35000 to Rs. 55000 per ton and royalty is only Rs. 200 so it doesn't take anything away from you but makes the things legal for you. And this will generate revenue that is spent back on you.*

The well-organized but complex process including various documents, site visits and checks and balances is not well taken by the crush plant and mine owners. They are not ready to accept these conditions and started agitation campaigns.

> *The crush plant and mine owners have started sit-ins and strikes due to proper royalty collection.*

They are also resisting the closures somewhat successfully because their plants are not registered in any name and the officials face trouble in locating the right plants even after court orders are issued against them.

2.2.3. Current Closures and fines a result of "operating illegally."

The relevant government officials defined illegal crush plant operations and mining.

> *Illegal mining and crush plants operations is defined as the one which has no license /lease/permit, and government gets no royalty from it. We are here to stop all illegal activities since 2016-17 in the province and now [post-merger] we have access FATA for one year.*

The findings show that during the premerger era there was no monitoring and very loose check and balance on the crush plants and mining operations. The royalty was levied even before the merger but because of no monitoring, 500-600 trucks per day used to cross from Shah Kas and not much royalty was collected. Currently if a mining site or transport vehicle has no documentation and avoids royalty, then we lodge a First Investigation Report (FIR) in a local police station that can lead to police arrest. Moreover, there is a tribunal in Hayatabad for grievance handling which is called

Environment Protection Tribunal (EPT). They have recently levied fines on these crush plants because plants did not follow orders. The fines range from Rs. 1 million to Rs. 5 million till now.

Crush Plant closure is not limited to District Khyber or due to merger event. They have resisted payment of royalty and taxes for long in District Mohmand and District Shangla as well. It was further found that the crush plants in *Takhta Beig* were closed because they were in the vicinity of a posh area Hayatabad. On the complaint of residents, around 60 plants have been sealed till now. Other places have got the same problem, but we haven't targeted them yet. Furthermore, local people also complained and there are schools and college within 300 meters. Similarly, more than 50 FIRs have been lodged in District Khyber against such illegal mines and transportation of crush in the last one year.

2.3.4. Dichotomies in Official Perspective

During the interviews, the government officials admitted to some pain points that might indicate the reason for the dissatisfaction of crush plant and mine owners. For instance, they admitted that before the merger, they had to pay royalty as well as protection money. Post merger, the legal payment system is enforced but they might still be paying the protection money.

> *The presence of government departments is not complete there and they cannot ensure complete rule of law.*

However, the official still opined that most problems arise out of their low education and understanding of the royalty system. As per law, they were only given tax break, but royalty must be paid.

> *People do not know the process and are uneducated but in addition they had a bigger share previously and now there will be some financial burden. Post-merger they are now a part of tax net, and they now oppose this.*

They also admitted that NMDs cover large geographical areas and difficult terrain with uncertain security situations, so it requires more resources than currently possessed by the concerned departments. Consequently, the time consumed for approval and licensing is longer than stated in law due to lack of resources and staff. However, they maintain that as a matter of rule, Government is the first owner of everything in this country. Thus, they are proud of their "performance" regarding closure of "illegal" operations.

> *Post-merger we have now more jurisdiction and we have controlled illegal mining up to 20%. It's a crime and cannot be removed in total but can be minimized.*

The findings show that government officials agree that crush plants and mines have a great contribution in employment of local inhabitants. And their closure can lead to

high unemployment and possible adverse law and order conditions.

> *Yes, many people have become unemployed due to closure of around 80 crush plants, and they should be taken care of as they will turn to illegal activities.*

However, rather than realizing their own primary role in the post-merger scenario of closures, they blame the new wave of terrorism for increasing unemployment and lack of new developments. Furthermore, they defend their "dichotomous" position by stating that the people of District Khyber perceived that they had liberty in the premerger era. However, their perception is invalid.

> *I think they have got liberty now as it has become legal. Operating under the constitution is real freedom as you are working legally now.*

The view of mines and plant owners is not consistent with the official perspective. Their discourse exhibits a "near to rebellion" state of mind which can be labeled with high skepticism and doubt in the dealing of government machinery.

2.3.5. Perception of Relevant stakeholders: Mistrust and Deceit

Mines and minerals association, the political representative and local tribal elders reported high mistrust on the regulatory institutions and their processes. They opined that they are being subjected to arm twisting strategies about the regulatory process applied to them. They are being forced to give up their legal mining right by deliberately slowing down and random prohibition of leasing the process and prohibition on use of dynamite and underhand persuasion to enter a joint venture (JV) with external organization at very unfavorable terms.

Explosives are the only feasible method for mining in District Khyber because of the scale of operations and the associated supply to crush plants. Moreover, the price of raw material is too low for deployment of sophisticated machinery (advocated as an alternative to use of explosives). However, they complained that they are not issued any explosive on the pre-text of heightened terrorist threat in the area. After numerous requests and meeting they were told that a tailor-made Standard Operating Procedure (SOP) will be crafted for them but even after 10 months this has not happened. They also reported that explosives have been issued without any obstruction, under normal SOP, in the rest of the country despite a wave of terrorist activities. They alleged that explosives are available to some individuals for mining in the black market at a five times higher price and they also must pay underhand money if they are caught using it. Secondly, the local representative of the mines and minerals association opined that the clause preferring the local owner is also systemically violated through the JV clause. He elaborated that the mines and mineral department has stopped issuing leases since September 2022 and made an excuse that there is a problem with the information technology (IT) system. However, they have issued JV leases to external organizations just before the purported IT fault. He further explained that local inhabitants can only

lease a limited area, but external parties can do JV with as many local individuals, and effectively explore and execute as much as they desire. Finally, he reported that officials have approached several local lease holders and tried to privately persuade them about their lack of own resources (technical knowledge and required investment) and to get into JV by surrendering a large share in return for getting some benefits from their leased land.

CHAPTER-3

CONCLUSIONS AND RECOMMENDATIONS

This chapter concludes the study in three parts. Firstly, the recommendations from the findings by framing the current situation through ease of business. Secondly, policy recommendations will be made to improve the situation. Finally, future research directions for further improvements are given.

3.1. Framing post-merger scenario through Ease of doing business index

The findings show that all the factors related to ease of doing business have deteriorated after the merger. The increasing footprint of regulatory authority is perceived negatively by the local stakeholders and are clearly in favor of the premerger regulations.

a) Starting a business related to mines and mineral industry or setting up a crush plant has become tedious, time consuming and very expensive as compared to the premerger era. Figure 2.1 shows that it might take more than six months to go through all approval for a mining lease and/or crush plant license.
b) Getting electricity is now more expensive due to additional taxes that were not a part of the premerger era. The situation regarding getting credit has remained the same as no mentionable credit lending facility has been extended to crush plants and mining operations.
c) Payment of taxes has become a very contentious issue due to constitutional tax break promised to all NMDs. However, the government departments insist on charging royalty and excise duty and argue that it is not a tax. Furthermore, they insist on collecting these payments while the court case is being heard. Additionally, the stakeholders expressed dissatisfaction about the assessment of excise and royalty. The premerger situation was much simpler, and a single royalty was levied and paid with ease.
d) Contracting with the government and enforcing contracts has become a pain point for the stakeholders. The government insists on getting the mines leased through a tedious process however they are unable to enforce their lease because local inhabitants have the physical possession of the area and they do not accept government jurisdiction without taking them on board. Furthermore, the mine owners perceived that they are being forced to enter JV with external companies on very unfavorable terms and surrender the right to their previous resources.
e) The post-merger scenario has shifted starting and legalizing businesses from one window operation to a web of regulatory bodies. Entrepreneurs must navigate a complex maze to obtain approvals, licenses, and operational permits. They must make various types of payments in the name of royalty, excise, and visitation fees of government officials to keep their businesses operational.

3.2. Recommendations for policy reforms and awareness campaigns

Policy recommendations must be made on two major fronts. Firstly, actions must be taken to address the post-merger loopholes and inconsistencies in laws that stifle the business environment through policy reforms. Secondly, awareness programs and trainings must be initiated to educate the stakeholders and decrease their negative perceptions, fear and pessimism regarding registration and becoming formal.

Suggestions for Policy Reforms

Several policy reforms must be made urgently to stop further deterioration of the situation and also build towards a positive future.

a) Create gradual implementation plan: Regardless of weakness in policy framework, it is imperative to create an incremental and gradual implementation plan. The irrational approach of declaring all crush plants and mining operations illegal due to the merger is more detrimental to the government than the stakeholders. It attracts the mines and crush plants to remain in informal sector or cease to operate and shift their capital to other area/countries. Thus, decreasing government revenues and creating waves of unemployment that may result in unrest, crime and even terrorist activity.

b) Check corruption: Creating fool-proof, corruption free mechanism is not impossible in the age of artificial intelligence and information technology. Automated systems without human intervention should be enforced through policies to dispel the negative perception of stakeholders.

c) Create one window operations: The government must provide a modern, one window operation following the letter and spirit of ease of doing business index.

d) Swift approval and licensing: Approval and licensing time should be decreased, and government departments should be fully equipped. They should be bound to complete the paperwork and inspection within the stipulated time or otherwise pay a penalty to the applicant.

e) Deliver swift conflict resolution: Dispute Resolution Council for business should be established to provide swift resolution of conflict among stakeholders. Appeals against their decision should disposed-off within a few days in the court of law.

f) Decriminalize business violations: The violation of formal mechanism must be decriminalized and dealt with through a separate forum.

Initiating awareness campaigns and imparting trainings

The stakeholders have an increased perception of corruption among government officials. They argue that government regulations exist to mint money from them, and extraordinary hurdles are created for them only to be softened after making underhand payment. They are not in favor of getting registered. In addressing these negative perceptions, it must be realized that the lack of education and no contact with formal government structure over the last 75 years has resulted

in high mistrust. The stakeholders are not equipped with knowledge to deal with the documentation requirement. Thus, once the policy reforms become visible through concrete on ground steps with visible benefits to the stakeholders, proper awareness and training programs must be launched. A program should be offered on a continuous basis and should be based on addressing the practical difficulties faced by stakeholders.

3.3. Future research directions

This study not only yields policy recommendations, awareness sessions and advocacy but also opens new vista of conducting relevant research that can guide actions.

a) Studies should be undertaken about mines and mineral industries in all the NMDs, especially Mohmand and Bajuar which are famous for marble production and many types of minerals.
b) Research must understand the effect of formal governance mechanism on all types of indigenous businesses.
c) Process, implementation, and effects of policies governing businesses in NMDs should be studied to pinpoint loopholes and suggest improvements.

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Research Team Profiles

Dr. Muhammad Junaid (Lead researcher) is Assistant professor at Institute of management Studies, University of Peshawar. He holds a PhD in entrepreneurship from the University of Essex, UK. He has Twenty years of teaching, research and administrative experience aided by strong IT and business background. He has designed, implemented and evaluated various developmental projects specifically for youth engagement, poverty reduction, community engagement and livelihoods development. His PhD is about Afghan entrepreneurship in Peshawar and he is the first ever researcher to undertake a PHD on livelihood practices of Afghans refugees (https://ethos.bl.uk/OrderDetails.do?uin=uk.bl.ethos.548595). He has several related publications. His post- PhD research and training focused on the issue of employability skills and designing administrating training programs aimed at addressing the issue of unemployed graduates in Pakistan through entrepreneurship and intrapreneurship. He has obtained various research grants and worked as an independent consultant and trainer in the same area. In addition, he has supervised various levels of post graduate students in their theses in topics related to employability, entrepreneurship and intrapreneurship among graduate students and Pakhtun females.

Muhammad Sulaiman (Co-researcher) is a free market expert with over 10 years of experience in the private sector. He is the founder of National Influencers, a first think tank organization of Khyber Pakhtunkhwa, Pakistan to struggle for a limited government, free market economy, rule of law, and individual liberty. He has worked with different free market think tanks, including Alternate Solutions Institute (ASI) and Students For Liberty (SFL). During this time, he conducted extensive research on the role of markets in promoting economic growth and development, with a particular focus on the impact of government policies on market efficiency.

Sulaiman is a public speaker and has given talks and lectures and shared his ideas and insights with policymakers, business leaders, students and the general public. He also translated a number of books by international authors in local languages contributing to free market economy, limited government, individual liberty and rule of law. Sulaiman is the member of Human Rights Watch in Pakistan and actively participated in the formation of the human rights policy for Khyber Pakhtunkhwa. He also contributed to the Universal Periodic Review (UPR) in 2017.

THE KHYBER PAKHTUNKHWA POWER CRUSHERS (INSTALLATION, OPERATION AND REGULATION) ACT, 2020

(KHYBER PAKHTUNKHWA ACT NO. I OF 2020)

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THE KHYBER PAKHTUNKHWA POWER CRUSHERS (INSTALLATION, OPERATION AND REGULATION) ACT, 2020

(KHYBER PAKHTUNKHWA ACT NO. I OF 2020)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 7th January, 2020).

AN
ACT

to regulate the installation and operation of the power crushers in the Province of the Khyber Pakhtunkhwa.

Preamble. --- WHEREAS it is expedient to regulate installation and operation of the power crushers in the Province of the Khyber Pakhtunkhwa in the manner hereinafter appearing and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

CHAPTER -1
PRELIMINARY

1. Short title, extent, application and commencement. --- (1) This Act may be called the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulation) Act, 2020.

(2) It shall extend to whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall apply to all forms of power crushers used in cutting, refinement, crushing, grinding of stones, minerals and rocks.

(4) It shall come into force at once.

2. Definitions. --- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

(a) "Appellate Authority" means the Secretary to Government, Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa;

(b) "authorized officer" means an officer authorized by the Licensing Authority under section 14 of this Act;

(c) "Government" means the Government of the Khyber Pakhtunkhwa;

(d) "licensee" means a person to whom a license for the purpose of installation and operation of power crusher is granted by Licensing Authority under this Act;

(e) "Licensing Authority" means the Director Industries and Commerce, Khyber Pakhtunkhwa;

(f) "person" means and includes an individual, a company, a firm or an association etc. registered under the relevant law for the time being in force;

(g) "power crusher" means any machine, either driven by electrical power or other mechanical process or device, used for crushing, cutting, grinding or refining of stones, minerals and rocks;

(h) "premises" means a place where a power crusher is installed and operated;

(i) "prescribed" means prescribed by rules; and

(j) "rules" mean rules made under this Act.

CHAPTER- II
LICENSING

3. Installation or operation of power crushers. --- No person shall install or operate a power crusher unless he has a valid license granted by the Licensing Authority under this Act.

4. Power to grant license. --- The Licensing Authority shall have the power to grant a license to a person for installation and operation of power crusher.

5. Procedure for a grant of license.--- (1) Any person who intends to install a power crusher shall apply to the Licensing Authority for the grant of license in the prescribed manner:

Provided that a person who is already operating a power crusher without a license shall, on commencement of this Act, apply to the Licensing Authority within thirty from the date of commencement of this Act, for the grant of license and in case of non compliance, such person shall be dealt in the manner as provided in section 11 of this Act.

(2) The application for the grant of license shall be accompanied by such fee, documents and details as may be prescribed.

(3) The Licensing Authority may, after making such inquiry as it may deem appropriate, grant license to person in the manner as may be prescribed.

6. Period of license and its renewal. --- (1) The license granted under this Act shall be valid for a period of one year and shall be renewable every year, on payment of such fee as prescribed for the grant of license.

(2) Application for renewal of license shall be made within thirty days prior to the expiry of the license. On delaying the renewal of license, late payment charges shall be payed in the prescribed manner.

CHAPTER –III
SAFE DISTANCE AND ENVIRONMENTAL COMPLIANCE

7. Safe distance.--- (1) No license shall be granted for installation and operation of power crusher without maintaining a safe distance as may be prescribed from the location like mosque, school, hospital, canal, tunnel, transmission line, orchard, forest, major road, bridge, human dwelling and any other strategic location.

(2) If any person has installed or intending to install or is operating power crusher without maintaining the safe distance or the power crusher was found causing hazard, the Licensing Authority or authorized officer may pass an order directing such person to shift such power crusher to a safe distance from such a location or may seal the premises.

CHAPTER- IV
RESPONSIBILITY OF LICENSEE.

8. Responsibility of licensee. --- It shall be the responsibility of the licensee to make arrangement for—

(a) cleanliness of the premises where power crusher and also provide for spittoons, safety equipment, personal protection equipments like helmets, gloves, glasses, masks, latrines and urinals for workers;

(b) ventilation, lighting, drinking water as well as artificial umidification;

(c) compulsory vaccination and inoculation of workers, disposal of dustfumes, noise reduction;

(d) water and solid waste management plans for the disposal of special focus on its treatment, recycling and re-use in line with best practices in vogue in the Industrial Sector;

(e) fencing of machinery and fire safety equipment;

(f) control of pollution, noise, effects of blasting and dust; and

(g) install water sprayers;

(h) implementation of environmental protection principles and laws; and

(i) transfer of trees from the place of installation of power crushers with the help of available technology to other places.

CHAPTER- V
INSPECTIONS AND PUNISHMENTS

9. Inspections. --- The Licensing Authority or authorized officer may inspect any power crusher for compliance of provisions of this Act and the rules on routine and annual basis in the prescribed manner.

10. Fine, sealing and cancellation of the license ---(1) If, during inspection, a licensee is found in violation of the provisions of this Act and the rules, the Licensing Authority or authorized officer shall impose fine which may extend to five hundred thousand rupees or seal the premises or both.

(2) In addition to the punishment under sub-section (1), the Licensing Authority may, after giving an opportunity of being heard, cancel the license.

11. Refraining or sealing of installation or operation of power crusher without license. --- (1) Any person involved in installation or operation of a power crusher without license, the Licensing Authority or authorized officer may, either pass an order directing such person to stop such installation or operation of such power crusher or seal the premises, as the case may be.

(2) Any person who contravenes any such order passed under sub-section (1), shall be punished with imprisonment for a term which may extend to one year or with a fine which may extend to five hundred thousand rupees or with both.

12. Power of obtaining information and entry. ---(1) For the purpose of giving effect to the provisions of this Act, the Licensing Authority or authorized officer may-

(*a*) by order in writing require any person to furnish such information in his possession relating to installation or operation of a power crusher as may be specified in the order; or

(*b*) enter or search the premises and take action as may be necessary.

(2) Any person who obstructs the Licensing Authority or authorized officer, while conducting duties under this Act, as the case may be, shall be punishable under section 186 of Pakistan Penal Code 1860, (Act XLV of 1860).

CHAPTER- VI
APPEAL

13. Appeal.--- (1) Any person aggrieved by an order, passed by Licensing Authority or authorized officer, may prefer an appeal within thirty (30) days of the date of the order to the Appellate Authority.

(2) The Appellate Authority may pass any order as it may deem fit after affording an opportunity of being heard to such person. The order of the Appellate Authority on such appeal shall be final.

CHAPTER- VII
MISCELLANEOUS

14. Delegation of powers. --- The Licensing Authority may, by general or special order and subject to such conditions, as may be specified in the order, authorize any officer of the Directorate of Industries and Commerce, Khyber Pakhtunkhwa to exercise such powers and perform such functions and duties in respect of such area or areas of the Province of the Khyber Pakhtunkhwa as specified in the order.

15. Cognizance of offence by Court.--- No Court shall take cognizance of any offence punishable under this Act, except on a complaint in writing, made by the Licensing Authority or authorized officer.

16. Indemnity. --- No suit or other legal proceedings shall lie against the Appellate Authority, the Licensing Authority or an authorized officer in respect of anything done or intended to be done in good faith under this Act and the rules made thereunder.

17. Act to override other laws. --- The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything to the contrary contained in any other law, for the time being in force.

18. Exemption. ---Government may, by notification in the official Gazette, exempt any power crusher or any particular area where the power crusher installed or operated from all or any of the provisions of this Act and the rules.

19. Power to make rules. --- Government may, by notification in the official Gazette, make rules for carrying into effect the provisions of this Act.

20. Repeal and Savings. --- (1) Section 6 of the Khyber Pakhtunkhwa Finance Act, 1995 (Khyber Pakhtunkhwa Act No. I of 1995), is hereby repealed.

(2) Subject to the provisions of this Act, any license, order or rules issued under the repealed section, shall be deemed to have been validly issued under this Act and shall continue to be in force until expired, cancelled, withdrawn or repealed under the provisions of this Act.

PART-III
MINERAL TITLES, MINERAL AGREEMENTS, RIGHTS AND OBLIGATIONS OF MINERAL TITLE HOLDERS

9. Types of mineral titles. (1) For the purposes of large-scale mining, the following mineral titles may be granted, namely:

(a) reconnaissance license for a period of one year over an area up to 1000 square kilometers;

(b) exploration license for a period of [1][eight] years over an area up to 500 square kilometers;

(c) mineral deposit retention license for a period of two years over the area of exploration license; and

(d) mining lease over an area up to 50 square kilometers.

(2) For the purposes of small scale mining, the following mineral titles may be granted, namely:

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(a) prospecting license for a period of five years subject to area limitation as indicated in **Schedule**;

(b) mining lease subject to area limitation as indicated in **Schedule**; and

(c) the Licensing Authority may increase or reduce acreage of the areas reserved for auction irrespective of the area limitations as provided in **Schedule** of this Act in the larger public interest.

(3) For the purposes of minor minerals, mining lease for a period up to three years may be granted.

10. Exemption.-- Notwithstanding, anything contained in this Act, the Mineral Title Committee with the approval of the Authority, may grant license and mining lease for any such period, for any [1][un-granted] area under any terms and conditions, to such public [2][or private] organization, as deemed appropriate in public interest [3][:

Provided that on the initiative of Government, or where a proposal is received from any public or private organization, for the grant of mining rights of any area on the basis of profit sharing with Government, the Mineral Titles Committee shall cause a tender in one major English and one major Urdu daily newspaper and invite bids for maximum share in profit with Government from amongst relevant competing public or private organizations. The maximum rate of profit, so quoted by any relevant organization in response to such advertisement shall become a reference value, against which the Mineral Titles Committee may grant mining rights to any organization of its choice under this section notwithstanding anything contained in any other law for the time being in force:

Provided further that where the tender has been invited by Department on the proposal received from a public or private organization under the preceding proviso, the Mineral Titles Committee shall give first right of refusal, in accordance with the reference value as determined in the preceding proviso, to such an organization:

Provided also that where the tender has been invited on the initiative of Government, the Mineral Titles Committee shall grant mining rights to that public or private organization who has quoted maximum rate of profit within the period prescribed in the advertisement.]

[1] Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

[2] Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

[3] Substituted and added vide Khyber Pakhtunkhwa Act No. XLVI of 2019

[1][**10A. Special provision for projects of national importance** Licensing Authority may grant temporary permission, in special circumstances, to contractors of public project of national importance having project cost to be determined by the Department for utilization of minerals or minor minerals from un-granted area for a specific period for undertaking that particular project under such terms and conditions, which shall include the cost of material and duration as determined by the Department through notification.]

[2][**11. Period of Lease.** (1) The initial period of the mining lease and its further renewals for similar periods, if permissible, shall be as provided in **Schedule-IX.**

(2) All the renewals permissible under sub-section (1) shall be on the basis of performance to the satisfaction of the Licensing Authority.]

12. Mineral agreements. (1) In case of large scale mining, Department may, on the recommendations of the Licensing Authority, enter into an agreement, relating to a mineral title, not inconsistent with this Act or any other law for the time being in force, with a Company, if it is satisfied that substantial investment is likely to be made in mineral operations and that the carrying out of the undertaking in question is desirable in the interest of the development of the mineral resources in the Province.

(2) Every mineral agreement shall make provisions with respect to all or any of the matters included in **Schedule II** .

(3) Nothing contained in a mineral agreement shall be construed as absolving any party thereto from complying with any requirement laid down by law for applying and obtaining any mineral title, license, approval, permission or other document required by any law for the time being in force.

13. Rights of holder of reconnaissance license. A reconnaissance license shall confer on the holder of the license the right to-

(a) carry out reconnaissance operation in relation to the reconnaissance area in question in respect of any mineral or group of minerals to which the license relates; and

(b) the erection or construction of ancillary works, in the reconnaissance area as may be reasonably necessary for, or in connection with, any reconnaissance operation, unless expressly prohibited under the terms of the license.

[1] Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

[2] Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(c) exploration license if he has applied in the prescribed form at least three months before expiry of the reconnaissance license.

(d) In case of failure to apply in the prescribed time frame as provided in sub-section c, a fine of rupees thirty thousands for each month shall be realized from the applicant other than prescribed fee but not later than one year.

14. Rights of holder of exploration license An exploration license shall confer upon the holder-

(a) an exclusive right to carry out exploration operation in respect of the area and any mineral or group of minerals to which the license relates;

(b) the right to enter and occupy the land which comprises the exploration area for the purpose of carrying out exploration operations, subject to the rights of surface holder;

(c) the right to take and divert water on or flowing through such land and use it for any purpose necessary for exploration operations subject to and in accordance with the provisions of law for the time being in force;

(d) to remove from the exploration area, required quantity of mineral or group of minerals or sample thereof, for the purpose of respective testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of such exploration operations to any other place whether within or outside the Province subject to prior written permission of the Licensing Authority and such other permission as may be required under law for the time being in force, outside Pakistan; and

(e) the erection or construction of ancillary works, in the exploration area, as may be reasonably necessary for, or in connection with, any exploration operations unless expressly prohibited under the terms of the license.

(f) the right to a mining lease or mineral deposit retention license [1][over the area of exploration license] if he has applied in the prescribed form at least six months before expiry of the exploration license.

[1]Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(g) In case of failure to apply in the prescribed time frame as provided in sub section f, a fine of rupees thirty thousands for each month shall be realized from the applicant other than prescribed fee but not later than one year.

15. Rights of holder of mineral deposit retention license. A mineral deposit retention license shall authorize the holder of the license-

(a) to retain the retention area**,** to which the license relates for further mining operations for two years;

(b) to carry out a programme of operations including evaluation of the mineral deposit concerned, as may be specified in the license;

(c) to remove from the retention area required quantity of mineral or group of minerals or sample thereof, for the purpose of respective testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of carrying out such programme of operations to any other place whether within or outside the Province, subject to prior written permission of the Licensing Authority and such other permission as may be required under any law for the time being in force, outside Pakistan;

(d) to do all other things, including the carrying out of investigations and operations and the erection or construction of ancillary works, in the retention area, as may be reasonably necessary for, or in connection with, any operation unless expressly prohibited under the terms of the license.

(e) the right to a mining lease [1][over the area of mineral deposit retention license] if he has applied in the prescribed form at least six months before expiry of the mineral deposit retention license.

(f) In case of failure to apply in the prescribed time frame as provided in sub section e, a fine of rupees thirty thousand for each month shall be realized from the applicant other than prescribed fee but not later than one year.

16. Rights of holder of prospecting license – A prospecting license shall confer upon the holder-

[1]Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(a) an exclusive right to carry out prospecting operations in respect of the area and any mineral to which the license relates;

(b) the right to enter and occupy the land which comprises the prospecting area for the purpose of carrying out prospecting operations, subject to the rights of surface holder;

(c) the right to take and divert water on or flowing through such land and use it for any purpose necessary for prospecting operations subject to and in accordance with the provisions of law for the time being in force;

(d) the right to remove from the prospecting area**,** any mineral to which the license relates, from any place where it was found or mined in the course of prospecting operations, to any other place within or outside the Province or, subject to such other permissions as may be required under any relevant law, to any place outside Pakistan;

(e) the right to erect or construct of ancillary works, in the prospecting area, as may be reasonably necessary for, or in connection with, any prospecting operation unless expressly prohibited under the terms of the license;

(f) the holder of a prospecting license shall have a right to a mining lease, if he has**-**

i. successfully carried out geological prospecting operations and won the mineral for which license was granted;

ii. been paying all the Government dues regularly and has paid such compensation, if any, as is provided in this Act;

iii. applied in the prescribed form for the grant of a mining lease at least three months before the expiry of the prospecting license; and

iv. In case of failure to apply in the prescribed time frame as provided in clause iii, a fine of rupees twenty thousands for each month shall be realized from the applicant other than prescribed fee but not later than one year.

(g) in case the holder of a prospecting license fails to apply for a mining lease even after the prescribed time frame as described in section 16 (f)

(iv), no application for conversion for the same shall be entertained [1][; and

(h) the right to sell or otherwise dispose of the mineral to which the license relates, found or excavated in the course of prospecting operations subject to any condition of the prospecting license or mineral agreement relating to the satisfaction of the internal requirements of Pakistan.]

17. Rights of holder of mining lease. - A mining lease shall confer on the holder of the lease

(a) the exclusive right to carry out mining operations in the mining area and in respect of any mineral or group of minerals to which the lease relates;

(b) the right to enter and occupy the land which comprises the mining area for the purpose of carrying out mining operations, exploration operations and prospecting operations in respect of any mineral or group of minerals to which the lease relates;

(c) the right to carry out prospecting and exploration operations in the mining area in conjunction with mining operations in relation to any such mineral or group of minerals to which the lease relates;

(d) the right to remove from the mining area, any mineral or group of minerals to which the lease relates, from any place where it was found or mined in the course of mining operations, to any other place within or outside the Province or, subject to such other permissions as may be required under any relevant law, to any place outside Pakistan;

(e) the right to take and divert surface and ground water on or flowing through such land and use it for any purpose necessary for mining operations subject to and in accordance with the provisions of the relevant laws;

(f) the right to sell or otherwise dispose of any such mineral or group of minerals subject to any condition of the mining lease or mineral agreement relating to the satisfaction of the internal requirements of Pakistan; and

[1] Replaced and inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(g) the right of erection or construction of ancillary works, as may be reasonably necessary for, or in connection with, the mining, exploration or prospecting operations, removal, selling or disposal of mineral or group of minerals to which the lease relates.

(h) the right to renewal of the mining lease if he has applied in the prescribed form at least six months before expiry of the mining lease.

(i) In case of failure to apply in the prescribed time frame as provided in sub section h, a fine of rupees thirty thousands and twenty thousands in case of large and small scale mining respectively for each month shall be realized from the applicant other than prescribed fee but not later than one year.

18. Obligations of holder of exploration license. It shall be a condition of an exploration license that the holder of the license shall-

(a) commence operations within six months of the grant of the license, and carry out exploration operations in the exploration area in accordance with the principles of good exploration practices;

(b) take all reasonable steps necessary to secure the safety, welfare and health of persons employed for the purposes of those operations in the exploration area;

(c) take all reasonable steps to protect the environment;

(d) maintain in good condition and repair all structures, equipments and other goods in the exploration area and used in connection with the exploration operations;

(e) remove from the exploration area all structures, equipments and other goods not used or not intended to be used in connection with the exploration operations;

(f) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structures, equipments or other goods of the possible hazards resulting therefrom;

(g) give to the Licensing Authority notice of the discovery of a deposit of any mineral or group of minerals to which the holder's license relates within two weeks after the holder determines that the deposit is of potential commercial interest; and

(h) give to the Licensing Authority notice of the discovery of a deposit of any mineral or group of minerals including radioactive minerals necessary for the generation of nuclear energy, mineral oil and natural gas, other than a mineral or group of minerals to which his license relates, within two weeks after making the discovery.

19. Obligations of holder of mineral deposit retention license, prospecting license and mining lease. The provisions of section 18 shall apply *mutatis mutandis* in relation to a mineral deposit retention license, a prospecting license and a mining lease as they apply in relation to an exploration license, and for that purpose, the reference to the holder of an exploration license shall be deemed to be a reference to the holder of a mineral deposit retention license, the holder of a prospecting license or, as the case may be, the holder of a mining lease.

[1][**19A. Force majeure.** (1) Any failure on the part of the holder of a mineral title to fulfill any of the obligations or conditions under a mineral title, or to meet any requirement of this Act, shall not be treated as a breach of the holder's mineral title in so far as the failure arises from an act of war, hostility, insurrection, or an act of God, or from any other cause specified in the conditions of the mineral title as constituting force majeure.

(2) Where the holder of a mineral title fails to fulfill any of the terms and conditions of the mineral title as a result of the occurrence of any circumstances of a kind referred to in sub-section (1), the holder shall forthwith give notice to the Licensing Authority, giving particulars of the failure and its cause.

(3) The Licensing Authority may, on application made to it by the holder of a mineral title referred to in sub-section (2), who has been prevented from exercising any right under the mineral title conditions as determined by the Licensing Authority, extend the period for which the mineral title in question has been issued by such reasonable period as may be determined by the Licensing Authority.

(4) The Licensing Authority may refuse any application referred to in sub-section (3) if the holder of the mineral title could, by taking reasonable steps which were available to the holder, have exercised the rights concerned during that period.

(5) The provisions of this section shall not be construed as absolving any holder of a mineral title from complying with any obligation under the mineral title or this Act to pay royalties, annual rents or fees.]

[1]Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

20. Obligations of the holder of prospecting license to submit prospecting scheme. (1) It shall be the duty of the holder of a prospecting license to prepare and submit, within two months of the grant of the license, a scheme of prospecting, in respect of the area covered by the license, for approval of the Licensing Authority and shall not commence operations unless the scheme has been approved.

(2) The scheme shall *inter alia* include location of the area, nature of a mineral prospecting, methods of prospecting, machinery and equipment to be used, phasing of prospecting operations, technical personnels to be employed, details of roads, residential accommodation for staff and labourers to be constructed and phase-wise estimated expenditure on the scheme.

(3) The scheme shall be accompanied by necessary geological summary reports, maps and plans.

(4) The Licensing Authority shall communicate the approval of the scheme to the licensee within one month of its receipt.

(5) If the holder of prospecting license fails to fulfill his obligations as required by the scheme, the holder of prospecting license shall forfeit the right to the grant of lease over any part of the area covered by the license.

(6) The holder of prospecting license on or before the determination of the license, shall, within one month after the determination of the license or the date of abandonment of the undertaking, whichever may occur earlier, securely plug all mines and fill up or fence any holes or excavations that he may have made in the area to such extent as the Licensing Authority may require and shall, to the like extent restore the surface of the land and all buildings thereon which he may have damaged in the course of prospecting.

[1][**20A. Joint Venture.** (1) A mineral title holder may enter into joint venture with a person, firm or company in the licensed or leased area or part thereof strictly in accordance with this Act subject to the approval of Licensing Authority.

(2) All the rights and obligations under the mineral title shall solely rest with the mineral title holder.

(3) In case of differences between the Mineral Title Holder and joint venture partner due to violation of any of the terms and conditions of the joint venture by any of them, they shall try to resolve the same through mutual negotiation with in a period of thirty days. In case they failed to resolve the differences within the

[1]Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

aforesaid period, the Mineral Title shall be liable for cancellation by the Licensing Authority under this Act.

20B. Idle Mineral Title. In case, the area under a mineral title has been kept idle for more than one year period, the mineral title shall be cancelled by the Licensing Authority subject to thirty days notice.]

PART-IV
GRANT AND MANAGEMENT OF MINERAL TITLES

21. Applications for mineral titles, documents to be annexed and security deposit (1) An application for a mineral title, other than minor mineral, shall be in the manner set out by the Licensing Authority and shall be accompanied by documents listed in relevant portion of **Schedule-II**.

(2) Applicant shall obtain online Token No. from the Department Website in accordance with details available on the Website of the Department and the application shall be processed further in accordance with rules.

(3) A separate application shall be made in respect of each area and for each mineral.

(4) Every applicant shall deposit, in respect of the mineral title applied for, a security at the rate and in the form notified by [1][Licensing Authority], provided that, if a license is converted into a lease, the security so deposited shall be adjusted towards security for the lease.

(5) The information contained in the application or furnished to the Licensing Authority in pursuance of an application for a mineral title, other than that incorporated in the register of applications shall be treated as confidential by the Licensing Authority.

22. Register of applications. (1) The Licensing Authority shall maintain a register of applications for mineral titles as indicated in **Schedule III**.

(2) The register maintained under sub-section (1), shall be open to public for inspection on payment of such fee as is notified by Mineral Title Committee from time to time.

23. Availability of area, priority and refusal (1) On receipt of the application, the Licensing Authority shall, before granting any mineral title, ascertain

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

that the area applied for does not overlap with an area already covered by a license or a lease.

(2) No lessee or licensee except cement manufactures [1][",large scale mineral titles holder, subject to the provisions of sub-section (2A)"] or multi mineral based industries shall hold more than [2][five (05)] licenses or leases; provided that if a person has more than [3][five (05)] licenses or leases before the commencement of this Act, he may only retain those [4][five (05)] licenses or leases which he deems appropriate and shall, unless otherwise allowed by the Department to assign those to any other person or company on the grounds of having invested substantial amount thereon, return other to Government for further grants in accordance with this Act [5]["Provided that public organization shall be exempted from the bar on number of mineral titles.";]

[6][(2A) In large scale mining, the cumulative area of all licenses granted to a person shall not exceed fifteen hundred (1500) square kilometers while that of leases shall not exceed one hundred and fifty (150) square kilometers.]

(3) In case there are more applications than one for the grant of license or a lease in respect of the same mineral or area the principle of first come first served shall apply; provided the applicant is otherwise eligible under this Act.

(4) A mineral title shall stand granted on the issuance of Allotment Letter by the Licensing Authority and execution of an agreement containing the terms and conditions as mentioned in **Schedule I** .

(5) If, in the opinion of the Licensing Authority, it is not expedient to grant the mineral title applied for, it shall record its reasons in writing and refuse the application.

24. Assignment.- A holder of a mineral title except reconnaissance license is allowed to assign [7][the area under the mineral title] or any part thereof;

i. with the approval of the Licensing Authority;

[1]Inserted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[2]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[3]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[4]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[5]Added vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[6]Added vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[7]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

ii. if prospecting exploration or mining operations in the area have been carried out successfully; and

iii. if the area is clear of all encumbrances.

25. Publication. As soon as may be after the grant, surrender, determination, or lapse of any mineral title under this Act, the Licensing Authority shall publish notice of such grant, surrender, determination, or lapse stating the name of the title holder and a brief description of the area concerned.

26. Shape of area. Each area in respect of which a license or a lease is granted shall, as far as practicable, be in a compact shape and shall be limited by well-marked and permanent physical boundaries to be bounded by straight lines; provided that where a gap of twenty meters or less exists between the licensed or leased area it shall not be granted to the applicant.

[1]**[27. Grant of other minerals over the already granted area for a mineral.**(1) The Licensing Authority may grant one mineral over one area to a person, however, in case of discovery of another mineral over the same area, the right of acceptance or refusal for the grant of second mineral shall be offered to the licensee or lessee within a specified period.

(2) In case of no response or refusal of the licensee or lessee for the grant of second mineral located apart separately, the Licensing Authority may delete any viable portion of the area containing the other mineral for grant to the other person, or grant a mineral title over the same area for the other mineral or mines in favor in any other person.

(3) In case two different minerals are inter-bedded or closely located, the Licensing Authority shall direct the licensee or lessee to get the grant of second mineral for systematic mining operation and utilization of mineral resource, within thirty days failing which the main lease or license may be cancelled.

(4) The second applicant shall deposit application fee as prescribed by Government, for grant of the applied mineral.]

28. Reciprocity. A license or a lease shall not be granted to, or held by, any person who is or becomes controlled directly or indirectly by a national of, or by a Company incorporated in, any country the laws and customs of which do not permit subjects of Pakistan or companies incorporated in Pakistan to acquire, hold and operate mining concessions on conditions which, in the opinion of the Government,

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

are reasonably comparable with conditions upon which such rights are granted to nationals of that country in Pakistan.

29. Application by an alien or a company incorporated outside Pakistan In the case of an application for a license or lease by an alien or a company incorporated outside Pakistan, such license or lease shall only be granted to a company incorporated in Pakistan for the purpose of receiving and working any such license or lease.

30. Responsibility of the applicant to submit development and exploitation scheme. (1) It shall be the duty of every applicant for grant of a lease to submit, along with the application, a development and exploitation scheme, duly prepared and authenticated by a qualified and registered mining engineer or geologist, for the approval of the Licensing Authority.

(2) The development scheme shall, *inter alia*, include the details indicated in **Schedule II**.

(3) The Licensing Authority or an authorized officer in this behalf shall approve the development and exploitation scheme within a period of two months from the date of submission of the scheme.

(4) If the development scheme is rejected, the Licensing Authority or officer authorized in this behalf shall communicate to the applicant the reasons for such rejection.

(5) The applicant shall within one month of the receipt of such communication, submit a revised scheme to the Licensing Authority, failing which a fine amounting to Rupees ten thousands for each additional month but not later than three months shall be imposed.

(6) In case of failure to submit the revised development scheme as provided in sub-section 5, the right of the applicant for the grant of lease shall lapse.

31. Commencement and conduct of operations(1) A lessee shall commence and carry out operations in accordance with the approved development scheme from the date of communication of the approval to the mineral title holder.

(2) If at any time but not less than six months after the grant of the lease, it is found that the lease holder is not working in accordance with the approved development scheme, the Licensing Authority or an authorized officer in this behalf shall impose a fine of rupees twenty thousand and shall direct the lease holder in writing to rectify the violations within two months.

(3) If the lease holder fails to rectify the violations within the time limit fixed by the Licensing Authority, the lease shall be cancelled.

32. Limits of boundaries. The boundaries of the area covered by a mineral title shall run vertically downwards below the surface towards the centre of the earth.

33. Demarcation of area and erection of boundary marks. (1) A mineral title holder shall, within thirty days of the issue of the license or a lease, get the granted area demarcated officially, after paying such fee as notified by the Licensing Authority.

(2) A mineral title holder shall not commence prospecting or exploration or mining operations unless he has obtained the demarcation certificate referred to in sub-section (1).

(3) A boundary dispute in respect of the licensed or leased areas between the mineral title holders shall be referred to the Licensing Authority whose decision shall be final.

(4) The holder of a mineral title shall, at his own expense, erect and at all times maintain boundary marks and pillars standing not less than one meter above the surface of the ground and being not less than one meter square in diameter at the base at every angle or corner of boundary lines to be fixed according to the demarcation.

34. Prohibition of buildings upon any public place, etc. (1) A holder of a mineral title shall not erect any building or carry out any surface operation upon any public recreation grounds, grave-yards or place held sacred by any class of people, any house, village site, public road or any other place which Government or the Licensing Authority may specify in this behalf.

(2) No owner of a leased area shall erect any building or undertake any construction activity without permission of the Licensing Authority and in accordance with the terms and conditions specified in the permission so granted.

35. Working near railway line, etc. (1) A holder of a mineral title shall not carry out or permit to be carried out any prospecting, exploration or mining operation, surface or underground, at or up to any point within a distance of five hundred meters in urban areas and three hundred meters in rural area from any railway line, public road, reservoir, canal,[1][high transmission power line of 132 KV and above], gas pipeline or other public works, or building or place of archaeological importance, human dwelling except with the previous permission of the Licensing Authority and in accordance with such conditions as may be imposed in the

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

permission. No such permission shall be granted in cases of quarries where stone power crushers can be installed.

(2) The Government may by notification prohibit all types of mining operations in areas having special considerations of ecological and touristic importance.

36. Distance from boundaries. No prospecting, exploration or mining operations shall be carried out by or on behalf of the holder of a mineral title in or under the licensed or leased area at or to any point within a distance of twenty meters from the boundaries of the area except;

i. with permission of the Licensing Authority; or
ii. same mineral title holder having adjacent areas.

37. Compensation. A holder of a mineral title shall pay such compensation as may be assessed in accordance with the law for the time being in force for all damage, injury or disturbance which may be done by him, or on his behalf, in exercise of the rights granted by the license or the lease and shall indemnify the Licensing Authority and the Government against all claims which may be made by third party in respect of any such damage, injury or disturbance.

38. District surface rent assessment and land acquisition. (1) A holder of a mineral title shall pay, for all Government land which it may use or occupy superficially for the purposes of the operations conducted under the license or the lease, a land compensation and water-rates at the rate fixed by the Licensing Authority.

(2) If the land belongs to a private person, a holder of the mineral title shall pay compensation to the owner of the land for the area actually used or occupied superficially and in such manner as may be mutually agreed upon between the land owner and the holder of the mineral title and in case of disagreement between them, at such rate and in such manner as may be determined by the [1][District Mining Liaison Committee]

(3) While determining the rates of land compensation, the Licensing Authority shall pay due regard to the nature of the area, location and land value.

(4) The private agreement for land compensation executed between the holder of mineral title and the land owner shall be registered with revenue authority of the district.

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019

(5) Payment of land compensation to the land owner shall be made through the district land collector.

(6) In case of persistent interference and obstruction in the exploration, prospecting, or mining operations by the land owner in any manner after settlement or fixation of land compensation by the [1][District Mining Liaison Committee] under sub-section (2), the [2][District Mining Liaison Committee] may on the request of the holder of a mineral title holder proceed to acquire the land under the Land Acquisition Act, 1894 (Act No. 1 of 1894), required for the said operations or any other ancillary matter.

(7) If in the opinion of the [3][District Mining Liaison Committee], it is necessary to acquire land to provide access to the licensed or leased area or if such a request is made by a holder of the mineral title, the [4][District Mining Liaison Committee] may proceed to acquire the requisite land under the Land Acquisition Act, 1894 (Act No. 1 of 1894); provided that before proceeding with the acquisition, the Licensing Authority shall give the parties reasonable opportunity of being heard.

(8) The cost of land acquired under this section shall be borne by the holder of the mineral title [5][and ownership of the acquired land shall rest with the Director General.]

39. Cutting or injuring tree. A holder of a mineral title shall not cut or injure any tree on Government land or on reserved forests without the prior permission in writing of the Licensing Authority or of such officer as the Government may authorize in this behalf, and where such cutting is also permissible under the relevant law.

[1]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[2]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[3] Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[4]Substituted vide Khyber Pakhtunkhwa Act No. XLVI of 2019
[5]Added vide Khyber Pakhtunkhwa Act No. XLVI of 2019

In a society which prefers beliefs over facts and dogmas over ideas, 'climate of opinion' remains murky. Theories presented remain devoid of historical context and "wish lists" are presented in the name of policy recommendations. In this situation, the battle of ideas can only be won by clear arguments, effective communication and strategic outreach. The importance of evidence based on empirically grounded knowledge takes a whole new level of importance. This battle of ideas is usually fought through think tanks- institutionalized forms of research and communication - which aim at influencing the climate of opinion in the long run for the benefit of society at large. National Influencers is a think tank that endeavors this goal. It is a non-partisan independent entity in Khyber Pakhtunkhwa - the intellectual capital of Pakistan.

National Influencers aims to become a primary pillar of the political and intellectual movement in Pakistan to play its role in overcoming the entrenched difficulties and increasing the demand for policies in the direction of structural reforms, free enterprise, and individual freedom.

National Influencers has conducted this research to understand the effects of recently implemented government regulations and constitution of Pakistan on the MSMEs in NMDs. On the basis of scientific findings that takes the view of all stakeholders, this research is expected to provide actionable and relevant policy recommendations in order to enhance the perform role of formal law vis-à-vis eases of doing business. It not only illustrates the perspectives of most relevant stakeholders about what is possible but also creates awareness among policy makers and government officials to take solid measures towards enhancing entrepreneurial developmental and job opportunities in the traditionally strong sectors of NMDs.

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